

### **REMARKS**

Claims 85-93, 96-103 and 106-109 are now pending in the application. Claims 99-103 and 106 are withdrawn from consideration. Claims 85 and 107-109 are amended herein. Support for these Amendments can be found at least in paragraph [0051.1] and Figures 12-17 of the present application. Paragraph [0051.1] is amended herein. No new matter is added. Claims 94 and 95 are cancelled herein. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102 & 103**

Claims 85-88, 95-98 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lanz (U.S. Pat. No. 4,796,848). Claims 85-87, 89, 91, 92, 95-98 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Anstett (U.S. Pat. No. 2,649,831). Claims 85-87, 89-98 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Duffy (U.S. Pat. No. 727,111). Claims 85-91, 96-97 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by White (U.S. Pat. No. 549,555). Claims 85-86, 89-91, 94-98 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Newport (U.S. Pat. No. 4,354,782). Claims 85-87, 89-94, 96-98 and 107-109 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lombard (U.S. Pat. No. 2,110,959). Claims 85-98 and 107-109 stand rejected under 35 U.S.C. § 103(a) as being anticipated by Paskert et al. (U.S. Pat. No. 4,167,885) in view of White. These rejections are respectfully traversed.

Claim 85 calls for a "said framing members having a strength of at least about 33 ksi . . . said stem having a concave interior surface and a convex exterior surface separated by first and second edges . . . wherein a portion of said exterior surface curves toward said interior surface as said portion of said exterior surface extends axially toward said first end." Similarly, Claim 107 calls for "said framing members having a strength of at least about 33 ksi . . . said first surface being concave and said second surface being convex . . . and a portion of said second surface curves toward said first surface as said portion of said second surface extends axially toward said first end." It is respectfully submitted that this subject matter is not disclosed, taught nor suggested in the prior art of record and is patentable.

Neither the Lanz reference, the Anstett reference, nor the White reference disclose the stem having concave and convex surfaces as called for. Thus, for at least this reason, it is respectfully submitted that Claims 85 and 107 are patentable over the Lanz reference, the Anstett reference and the White reference.

The nails, according to the present invention, all call for a portion of the convex surface curving toward the concave surface as the portion of the convex surface extends axially toward the first end which corresponds to the tip and it is configured to pierce framing members. In contrast, the Lanz reference discloses a pipe hanger that doesn't have concave nor convex surfaces as called for much less the curving of a portion of a convex surface toward a concave surface. The Ansett reference discloses a nail having flat parallel surfaces that do not curve toward one another as they extend toward the end of the nail. The Duffy reference does have concave and convex surfaces but the convex surface extends axially straight, as shown in Figures 3 and 5 of

the Duffy reference as it extends toward the end of the nail. The White reference does not have concave and convex surfaces as called for much less the curving of a portion of a convex surface toward a concave surface as called for. The Paskert reference also fails to disclose or suggest a portion of a convex surface curving toward a concave surface as the portion extends axially. Rather, the Paskert reference discloses the nail being straight as it extends axially toward the end. The Newport reference does have concave and convex surfaces but fails to disclose a portion of the convex surface curving toward the concave surface as it extends axially toward the end. Rather, as shown in Figures 5 and 10 of the Newport reference, the convex surface extends in a straight manner as it extends axially toward the end. The Lombard reference has convex and concave surfaces but fails to disclose or suggest a portion of the convex surface curving toward the concave surface as it extends axially toward the end. Furthermore, as shown in the various cross-sectional figures of the Lombard reference, the convex surface extends straight as it extends axially toward the end. Thus, for at least these reasons, it is respectfully submitted that the subject matter of Claims 85 and 107 is not disclosed, taught or suggested in the prior art of record and that these claims are patentable.

Moreover, the Lombard reference fails to disclose a first end configured to pierce framing members upon receiving the driving force as called for in Claims 85 and 107. Rather, the Lombard reference discloses an end that is substantially flat and is configured to be received within pre-existing apertures. The apertures, while being slightly less in width or diameter than the space and overall width of the effective sections of the Lombard fasteners are pre-existing and, as such, the Lombard fastener

does not need to be configured to pierce the framing members. Reference to these pre-existing apertures is contained throughout the disclosure of the Lombard reference and shown at least in Figure 17 of the Lombard reference. Thus, for at least these additional reasons, it is respectfully submitted that Claims 85 and 107 are patentable over the Lombard reference.

Furthermore, Claim 107 also calls for "wherein the nail is operable to fasten said framing members together solely by driving the nail through said framing members." In contrast, the Newport reference discloses a two-piece fastening system that relies upon a curved fastener that is inserted into an opening and subsequently expanded by the insertion of a screw, a bolt or similar device into the interior of the curved fastener. The radial expansion is used to cause the teeth on the sides to engage with the walls of the aperture. If the screw is removed therefrom, the sides of the curved fastener spring inwardly which disengages the teeth from the aperture allowing the fastener to be easily pulled from the aperture. See at least Col. 3, lines 44 – 56 of the Newport reference. Thus, for at least these additional reasons, it is respectfully submitted that Claim 107 is patentable over in the Newport reference.

Claims 86 – 93, 96-103 and 108-109, all depend from one of Claims 85 and 107. As such, for at least the same reasons stated in the above referenced Claims 85 and 107, these claims are also patentable over the prior art of record. Thus, withdrawal of the instant rejection is requested.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: December 27, 2005

By:   
Jeffrey H. Urian, Reg. No. 46,232

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

JHU/ps